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LABORERS PENSION TRUST FUND  
FOR NORTHERN CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

LARRY TOTTEN as CHAIRMAN and JOSE  
MORENO as CO-CHAIRMAN of the BOARD  
OF TRUSTEES FOR THE LABORERS  
PENSION TRUST FUND FOR NORTHERN  
CALIFORNIA,

Plaintiff,

v.

DORATRIZ P. CERVANTEZ, an individual,  
CHRISTINE LARGAESPADA, an individual, and  
DOES 1-50, inclusive,

Defendants.

**Case No. C-04-5441 SBA**

**AMENDED ORDER FOR DISCHARGE OF  
STAKEHOLDER IN INTERPLEADER  
ACTION AND FOR PRELIMINARY  
INJUNCTION**

**DATE:** None  
**TIME;** None  
**CTRM.:** Ctrm. 3, 3<sup>rd</sup> Floor  
**LOCATION:** Oakland

Based upon the papers previously, including, the motion, memorandum of points and authorities, Declaration of Andrea J. Kirkpatrick and attachments thereto and the papers filed herewith, including Plaintiffs' Ex Parte Motion to Amend Order for Discharge of Stakeholder in Interpleader Action and for Preliminary Injunction and the Declaration of Andrea J. Kirkpatrick in support thereof, this Court finds as follows:

1. Plaintiffs' interpleader is proper because multiple claimants have made adverse claims to the specific sum of money (\$47,472.00), the Laborers Pension Trust Fund for Northern

1 California (hereinafter "Fund") is not, in any way, at fault for the present controversy regarding the  
2 interplead funds and the Fund claims no interest in the \$47,472.00. Fed. R. Civ. Pro. 22; *Bank of*  
3 *America Nat'l. Trust & Sav. Ass'n. v. Mamakos*, 509 F.2d 1217 (9<sup>th</sup> Cir. 1975);

4 2. Plaintiffs' request for a preliminary injunction, enjoining all actual and potential  
5 claimants from the further assertion of claims relating to the \$47,472.00 deposited with the court is  
6 appropriate because the Fund is facing conflicting demands to the interplead funds and has no  
7 adequate remedy at law. *United States v. Major Oil Corp.*, 583 F.2d.1152, 1157-58 (10<sup>th</sup> Cir.  
8 1978); and

9 3. The Fund is a disinterested stakeholder that has been forced to bear the expense of  
10 guarding against multiple actions stemming from adverse and conflicting claims to the \$47,472.00.  
11 Kirkpatrick Decl. at ¶ 8. Therefore, in the interest of fairness and equity, the Fund should be  
12 awarded the attorneys' fees and costs that it has incurred in guarding against the adverse claims to  
13 the \$47,472.00. *Rhoades v. Casey*, 196 F.3d 592, 603 (5<sup>th</sup> Cir. 1999); *Schirmer Stevedoring Co. v.*  
14 *Seaboard Stevedoring Corp.*, 306 F.2d. 188, 194-95 (9<sup>th</sup> Cir. 1962); *Gelfgren v. Republic Nat'l. Life*  
15 *Ins. Co.*, 680 F.2d. 79,81 (9<sup>th</sup> Cir. 1982).

16 Based on the rational set forth above and good cause showing, it is hereby ORDERED that:

17 1. Plaintiffs are discharged from further liability to any actual and potential claimants  
18 with respect to the amount of \$47,472.00 that was deposited by Plaintiff;

19 2. Plaintiffs are discharged and relieved of further responsibility in the above-entitled  
20 action;

21 3. All actual and potential claimants are permanently enjoined from asserting further  
22 claims to the monies deposited by Plaintiffs with the Court on February 9, 2005; and

23 4. Plaintiffs are awarded the costs and fees incurred between November of 2004 and  
24 June of 2005 in connection with these proceedings in the amount of \$6,877.81 and that such fees and  
25 costs shall be taken out of the \$47,472.00 deposited by Plaintiffs with the court.

26 5. Plaintiffs are awarded the attorneys' fees and costs incurred in connection with these  
27 proceedings between July 1, 2005 and September 21, 2005, in the amount of \$7,614.66 and that such  
28

1 fees and costs shall be taken out of the \$47,472.00 deposited by Plaintiffs with the court.

2 IT IS SO ORDERED.

3  
4 DATED: 10/27/05



The Honorable Saundra B. Armstrong  
United States District Judge